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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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In the matter of:

Docket No. S-20703A-09-0461

SIR MORTGAGE & FINANCE OF ARIZONA,
INC., an Arizona corporation,

GREGORY M. SIR (a/k/a "GREG SIR"), and
ERIN M. SIR, husband and wife,

Respondents.

**RESPONDENTS' SUPPLEMENT
TO MOTION TO VACATE**

Sir Mortgage & Finance of Arizona, Inc ("Sir Mortgage"), Gregory M. Sir ("Mr. Sir," and together with Sir Mortgage, "Respondents") and Erin M. Sir ("Respondent Spouse") respectfully provide this supplement to their motion to vacate.

I. Introduction.

Sir Mortgage has operated under the supervision and regulation of the Arizona Department of Financial Institutions ("ADFI") as a mortgage banking business for 12 years. During those 12 years, the firm has never heard from the Securities Division ("Division") of the Commission. In the Spring of this year, the Division appears to have commenced its investigation. It issued subpoenas, sent emails and made verbal requests for information. On July 15, 2009, Respondents provided the Division with a detailed analysis explaining why Respondents were not issuing securities (Attachment A to the Answer). That was approximately four months after the Division appears to have begun its investigation. The Division never responded to this letter, nor provided a legal rationale for its belief that the Commission has jurisdiction over this matter.

On September 24, 2009, approximately six months after the Division began its investigation, it issued a Temporary Order to Cease and Desist ("TCD"). Six months is a long time to wait before acting if, "the public welfare requires immediate action." The obvious reason is that the Respondents, who do not advertise or solicit lenders via the Internet, the print media or otherwise, have never remotely threatened the "public welfare."

1 Within days, on September 28, 2009, the Respondents requested a hearing. And on
2 October 23, 2009, the Respondents filed an Answer and Motion to Vacate the TCD. Thereafter,
3 the presiding Administrative Law Judge ("ALJ") issued a Procedural Order and scheduled a
4 pre-hearing conference for October 28, 2009. At that pre-hearing conference, the hearing was set to
5 begin on February 1, 2010.

6 **II. The TCD must be vacated because the hearing schedule does not comply with A.A.C.**
7 **R14-4-307.D.**

8 The power to issue a TCD is an extraordinary power. It allows the Division to essentially
9 shut down any business it chooses, without notice and an opportunity for a hearing. It allows the
10 Division to do so without approval from the Commission or an ALJ. This can easily lead to
11 financial devastation – especially for a small business like Sir Mortgage. The Commission's rules
12 provide an important safeguard to protect the rights of people and businesses subject to a TCD.
13 The rules require that "when a respondent requests a hearing," the Commission "**shall** set a date,
14 time and place for the hearing" and the hearing "**shall** be within 30 days, but not earlier than ten
15 days, after the written request for a hearing." A.A.C. R14-4-307.D (emphasis added). Here, thirty
16 (30) days have already passed from the time Respondents requested a hearing, and a hearing is not
17 set to begin for several more months. Under these circumstances, the TCD should be vacated due
18 to failure to comply with the schedule mandated by A.A.C. R14-4-307.D. The Rule is clear. A
19 hearing, not a pre-hearing conference, is to take place within 30 days. That has not happened.

20 **III. Conclusion**

21 The TCD should be vacated because: (1) it does not comply with the "public welfare"
22 requirements of A.R.S. § 44-1972 and A.A.C. R14-4-307.A; and (2) the mandatory hearing
23 schedule for TCD cases under A.A.C. R14-4-307.D has not been followed.

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1 RESPECTFULLY SUBMITTED this 3rd day of November, 2009.

2 **ROSHKA DeWULF & PATTEN, PLC**

3
4 By 

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10 ORIGINAL and thirteen copies of the foregoing
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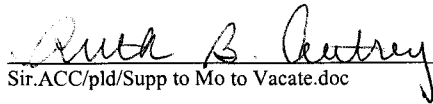
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